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MORNING SESSION, FEBRUARY 18, 2022

(5:24 p.m.)

THE COURTROOM CLERK: Civil Action Number 21-cv-35,
Omeish versus Stacey Kincaid, et al.

Would counsel please come to the podium and state your
name for the record.

MR. SADOWSKY: Your Honor, Justin Sadowsky representing
Plaintiff Omeish.

THE COURT: Good morning.

MR. FRANCUZENKO: Good morning, Your Honor. Alex
Frankuzenko on behalf of Sheriff Stacey Kincaid.

THE COURT: Good morning. This matter is before the Court
on Defendant Kincaid's motion for a protective order. The Court
has had an opportunity to review the motion and memorandum in
support, the opposition to the motion, and it appears to the
Court that there was no reply to that opposition, or at least the
Court is not in possession of one; is that correct?

MR. FRANCUZENKO: Your Honor, we filed a reply Wednesday.
It's --

THE COURT: Okay. All right.

MR. FRANCUZENKO: I can give you the ECF number.

THE COURT: No, I'm sure you'll adequately address that as
you stand at the podium. So, is there anything that you would
like to add to your motion at this time?

MR. FRANCUZENKO: Your Honor, not much, other than we

1 really are focusing on Judge O'Grady's order, and we believe that
2 is the law in the case. If you read Judge O'Grady's order
3 carefully, the only, only issue related to Sheriff Kincaid is the
4 destruction of the pictures. How other inmates are treated, how
5 grievances are made by other inmates, other similarly situated
6 individuals, Muslim women, how their pictures and so forth are
7 addressed have absolutely nothing to do with the destruction of
8 her pictures, plain and simple.

9 The relevant discovery which I would have expected as to
10 who -- you know, where those pictures are, who has actual custody
11 of those pictures, whether they even still even exist in any
12 systems, that -- that type of discovery wasn't even requested.
13 The discovery that was sent out, the ones that are before the
14 Court, the ones that we've objected to, would have been
15 appropriate, some of it -- we probably would still be here on the
16 broadness of it -- would have existed if there still were viable
17 claims related to the policy itself and potentially monetary
18 claims. Here we are on a very, very, very narrow platform, and
19 we still -- we're willing to produce the documents we've
20 identified in the initial disclosures because they deal
21 specifically with Ms. Omeish.

22 It's beyond me how 98 percent of the requests that are
23 being asserted here, whether it's through interrogatories or
24 requests for documents, are in anyway proportionate to the
25 remaining claim, and we think it would be unfair and go well

1 beyond what Judge O'Grady has ruled on in this case to permit
2 discovery of that nature.

3 THE COURT: All right. Counsel.

4 MR. SADOWSKY: Your Honor, Judge O'Grady found that the
5 only remedy that we have in this case is destruction of the
6 photograph, but there's no cause of action for destruction of
7 photograph. In order to get the remedy of the destruction of the
8 photograph, we would need to prove the causes of action in our
9 complaint, most particularly the RLUIPA cause.

10 If you look at page 7 of Judge O'Grady's order, he says,
11 {indiscernible} prospective relief under RLUIPA. The RLUIPA test
12 is, under *Hope v. Hobbs*, is that if a plaintiff can establish
13 that they have a sincere religious belief and that the government
14 has violated that sincere religious belief in the incarceration
15 context, then the government -- then the defendant -- the
16 defendant's actions violated it, unless they can show that their
17 policy that violated the belief is the least restrictive means of
18 accomplishing an important government interest.

19 And in the reply brief, I know you haven't had a chance to
20 read it, the government -- the -- you know, they claim that
21 there's no RLUIPA claim in it, which I think is contrary to page
22 7 of the motion to dismiss decision, but, you know, they say very
23 clearly, "The requirements of SOP 533 show the least restrictive
24 means possible is already utilized." They understand that
25 whether SOP 533 is permissible in light of the religious beliefs

1 of Abrar Omeish is the central question as to whether there's a
2 violation, which is what we would need to show in order to get
3 our remedy, and --

4 THE COURT: And how does the requested discovery go to
5 show that?

6 MR. SADOWSKY: So I can go through this. This is normally
7 what we would do in a meet and confer, which I think would be the
8 normal approach to objecting to discovery requests instead of
9 objecting to, say, discovery -- so, asking for a protective
10 order, among other things, for all evidence that --

11 THE COURT: So it's your representation to this Court that
12 no meet and confer occurred?

13 MR. SADOWSKY: The only meet and confer that occurred in
14 this case is they asked us if we consented to a protective order.
15 I mean -- I mean against our discovery requests, and obviously we
16 did not consent to that.

17 THE COURT: Let's resolve that issue first, because the
18 Court doesn't have to go much further if that did not occur.

19 MR. SADOWSKY: At least that's all -- that's all I'm aware
20 of. I'm not the only lawyer on my team.

21 THE COURT: Mr. Francuzenko.

22 MR. FRANCUZENKO: Your Honor, first of all, that should
23 have been raised in the opposition.

24 THE COURT: Whether it should or should not, the rule is
25 clear.

1 MR. FRANCUZENKO: I agree.

2 THE COURT: A good faith attempt to resolve the matter
3 must occur before the motion is filed.

4 MR. FRANCUZENKO: No question about it, and I've been
5 before this Court and before Your Honor, and I am aware of that.
6 I made -- I sent e-mails, and I had a telephone conversation with
7 lead counsel in Chicago, and we did have a meet and confer on
8 these issues, and he declined to withdraw or limit the discovery
9 requests. It wasn't with this counsel, but it was with lead
10 counsel.

11 THE COURT: So be it.

12 MR. FRANCUZENKO: And I've got phone records, if there's a
13 question.

14 THE COURT: The Court will accept counsel's proffer.

15 MR. SADOWSKY: All right. Putting that aside, that was
16 not -- again, the lead -- we focused on this. At least -- so,
17 so -- and I do want to move on to the details, but some of the
18 requests that they've refused to produce and seek a protective
19 order are -- I want to get these right. I don't want to make any
20 mistakes -- a copy -- any and all documents defendants possess
21 which support defendant's defenses, whether affirmative or not, a
22 copy of all policies, procedures or directives which the
23 defendants consider relevant to any of their affirmative
24 defenses, a copy of any and all exhibits the defendants may
25 introduce at summary judgment or trial, and all documents

1 identified, reviewed, used --

2 THE COURT: Well, let's start with that last one. This
3 was in a discovery request.

4 MR. SADOWSKY: Yes.

5 THE COURT: Is it your understanding that typically
6 counsel, in responding to discovery, know all the documents
7 they're going to introduce at trial?

8 MR. SADOWSKY: Usually there's an expectation -- these are
9 standard -- I think I copy-pasted these from --

10 THE COURT: Well, that may be your problem. People do
11 things wrong all the time. That's why this building stands.

12 MR. SADOWSKY: Well, let me explain it. It's at least
13 typical, and I think -- and I think this is what --

14 THE COURT: No, actually it's not very typical when --
15 {Simultaneous conversation indiscernible.}

16 MR. SADOWSKY: -- okay -- {Simultaneous conversation
17 indiscernible.}

18 THE COURT: When it is typical, it's not correct.
19 Generally speaking, in this Court's experience, as soon as you
20 use the terms "any and all," you're running into a problem with
21 opposing counsel already jumping up and screaming overly broad.
22 That's in this Court's experience.

23 MR. SADOWSKY: I think it is correct that at least -- that
24 defendant -- a party is expected to produce in discovery all
25 evidence that supports their claims or defenses.

1 {Simultaneous conversation indiscernible.}

2 THE COURT: He didn't say a hundred percent of your
3 discovery requests were objectionable.

4 MR. SADOWSKY: But he objected to that request and said if
5 we didn't withdraw it, he intends to unseek a protective order.

6 THE COURT: Well, let's figure out why.

7 MR. SADOWSKY: So then let's --

8 THE COURT: No, no, no, no. Let's figure out why.

9 Mr. Francuzenko, that's a pretty standard request. I
10 mean, you are required to provide information that supports your
11 claims.

12 MR. FRANCUZENKO: You're right, and that's what we've
13 done. We've said that --

14 THE COURT: -- then why is he reading an objection?

15 MR. FRANCUZENKO: Well, the objection on the trial
16 exhibits, yeah, Your Honor. First of all, the previous case is
17 reflective of that.

18 THE COURT: Oh, this is not an objection to your
19 discovery.

20 MR. FRANCUZENKO: The trial -- the trial exhibits will be
21 identified pursuant to --

22 THE COURT: No, no, no, no, we're here for a motion for
23 protective order because they're seeking certain things in
24 discovery.

25 MR. FRANCUZENKO: Right.

1 THE COURT: It's the Court's understanding that you've
2 objected to their discovery requests.

3 MR. FRANCUZENKO: I've done two things. I've filed timely
4 objections within 15 days pursuant to the Court's local rules,
5 and when we could not work out any kind of reasonable production,
6 we filed a motion for protective order, and --

7 THE COURT: Well, let's just deal with that particular
8 request.

9 MR. FRANCUZENKO: Trial exhibits?

10 THE COURT: No, not trial exhibits. He didn't say trial
11 exhibits, he said evidence that supports your claims and
12 defenses.

13 MR. FRANCUZENKO: And that's --

14 THE COURT: -- and he said you objected.

15 MR. FRANCUZENKO: We did --

16 THE COURT: How did you object to that.

17 MR. FRANCUZENKO: We objected, but we also said that we
18 will produce everything that we've identified in our initial
19 disclosures.

20 THE COURT: We're not very fond of those types of
21 objections, and that's been made quite clear in some bench bar
22 CLEs because the other side -- that's how we end up here, because
23 the other side doesn't know what -- are you standing on your
24 objections to any of these things, or are you producing
25 everything? Because you have to very carefully, then, word your

1 response to the discovery requests.

2 MR. FRANCUZENKO: I understand.

3 THE COURT: Because they're left up in the air on whether
4 you produced or not, so actually how did you -- what was your
5 specific response to that request?

6 MR. FRANCUZENKO: I'm not clear right now which request
7 the Court is asking, because he just shot off three of them.

8 THE COURT: Any and all information or documents that you
9 intend to use to support your claims or defenses.

10 MR. FRANCUZENKO: Okay. So with regard to that, we
11 objected because it was too broad as far --

12 THE COURT: On what basis?

13 MR. FRANCUZENKO: Any and all.

14 THE COURT: Well, that's one of the ones that generally
15 may not be, because the whole category is general --

16 MR. FRANCUZENKO: -- right --

17 THE COURT: -- that supports your claims or defenses.

18 MR. FRANCUZENKO: Right. So --

19 THE COURT: Only you know what documents would support
20 your claims or defenses, so actually the request is kind of
21 narrowing things because it's not requesting any and all
22 documents, only any and all documents that support your claims.

23 MR. FRANCUZENKO: So, with regard to that specific
24 request, Your Honor, we would at this time say that all of the
25 documents that have been identified in our initial disclosures

1 would be the ones that we would rely on.

2 And we made that clear in terms of when I had the
3 discussion with lead counsel on that particular point.

4 {Simultaneous conversation indiscernible.}

5 MR. FRANCUZENKO: We could not reach an agreement.

6 THE COURT: {Indiscernible} reference, if that was the
7 written response, we could avoid this particular portion of the
8 conversation in a motions hearing.

9 MR. FRANCUZENKO: Understood, and I'll try to be more
10 clear in my objection and then file the appropriate response.

11 THE COURT: Okay. So you mentioned -- he mentioned three,
12 and so that was one. That seems to be dealt with.

13 MR. FRANCUZENKO: Well, the trial exhibits I have a
14 problem with because -- and I've dealt with this in other cases
15 as well. I can give -- I can identify documents that may be used
16 as trial exhibits at trial, but until we get to the pretrial and
17 we actually identify exhibits, strategy, motions, other things
18 may occur which --

19 THE COURT: -- I completely concur. It was an inartfully
20 worded request, but we don't file motions and things because of
21 inartful wording, we try to work it out.

22 MR. FRANCUZENKO: I agree with that.

23 THE COURT: I mean, you said you worked the other one out
24 with lead counsel, so this one for lead counsel, did you express
25 your concern about the request for trial exhibits with lead

1 counsel? And if so, what was his response?

2 MR. FRANCUZENKO: Your Honor, it was mentioned, but we
3 never got a resolution to that.

4 THE COURT: You see, you're supposed to try to get the
5 resolution before we include it in the motion for the protective
6 order.

7 MR. FRANCUZENKO: Understood. The focus of this motion
8 really is on the other request, not particularly that one, and
9 again, our opposition and everything else would indicate that by
10 producing initial disclosures -- all the documents in the initial
11 disclosures, that some of those responses would be satisfied. We
12 got a response saying that's not going to be good enough. So we
13 did take the assertive action of filing a motion for protective
14 order.

15 THE COURT: So what is your response to his argument that
16 even though the relief that can be granted by the Court has been
17 narrowed by Judge O'Grady, in order to get to that relief we must
18 prove the claim upon which the relief is to be granted, and
19 therefore we need -- we have the right to discovery to assist us
20 in proving the claim that shows that we deserve that relief?

21 MR. FRANCUZENKO: Your Honor, I have no problem with that
22 on a theoretical approach. That's fine. {Indiscernible}.

23 THE COURT: {Simultaneous conversation indiscernible.}
24 believe --

25 MR. FRANCUZENKO: -- how does someone else --

1 THE COURT: Which claim do you believe he is required to
2 prove in order to seek the relief of permanent injunction?

3 MR. FRANCUZENKO: I would leave that up to them. That's
4 their theory of the case.

5 THE COURT: Well, then, how can you so more narrowly
6 define what is relevant in the discovery process if we can't even
7 decide which claim they're going to be seeking the relief upon?
8 Because the claim upon which they're seeking the relief would
9 have a significant impact on the discovery they would be required
10 and/or authorized to acquire, because the relevance depends --
11 the relevance of the information sought depends on the claim that
12 is being propounded, does it not?

13 MR. FRANCUZENKO: Your Honor -- I'm not even going to
14 relevance because I'm not sure that's the appropriate standard
15 for discovery in this particular case.

16 THE COURT: That's the appropriate standard for all
17 discovery.

18 MR. FRANCUZENKO: This is about what's proportionate.

19 THE COURT: No, no. {Simultaneous conversation
20 indiscernible.}

21 MR. FRANCUZENKO: -- Well --

22 THE COURT: How can I determine proportionality until I
23 determine relevance? If there are 50,000 documents that are
24 relevant and you have not -- and they're seeking -- permanent
25 injunction is like the biggest thing. Money can't even --

1 MR. FRANCUZENKO: -- absolutely --

2 THE COURT: Money can't even make you whole. Money can't
3 even do it for you; \$10 billion can't do it for you. The only
4 thing you have left is the permanent injunction.

5 MR. FRANCUZENKO: Absolutely.

6 THE COURT: That's, like, the biggest relief there is. So
7 what's not proportionate to that from a discovery standpoint?

8 MR. FRANCUZENKO: I agree with you a hundred percent. So,
9 Your Honor, the only claim is -- the form of relief is the
10 destruction of her pictures or what happens to her pictures.

11 THE COURT: Which is an injunction?

12 MR. FRANCUZENKO: And that's it. So what those other
13 people's complaints about --

14 THE COURT: -- but that's why it's important to determine
15 which claim must they prove in order to seek that relief?
16 Because you don't get to the relief until they prove the claim,
17 and so it's the discovery on the claim that is relevant.

18 MR. FRANCUZENKO: Right, and --

19 THE COURT: -- it's not the discovery, because you can
20 look at discovery in two ways, and sometimes people bifurcate it;
21 discovery on the culpability and discovery on damages.

22 MR. FRANCUZENKO: And, Your Honor --

23 THE COURT: -- and what you're talking about, seem to be
24 talking about, protect -- saying why you want to narrow the scope
25 of discovery is based on the damages that are sought, but that's

1 only one portion of it.

2 MR. FRANCUZENKO: They kind of go hand-in-hand in a
3 situation.

4 THE COURT: Yes, but they still are authorized under the
5 rules to get discovery concerning the claim that must be proved
6 in order to seek said damages.

7 MR. FRANCUZENKO: And, and, and what other people's
8 experiences are are not --

9 THE COURT: -- well, I don't know because you have not
10 given me which claim they're requir--

11 MR. FRANCUZENKO: They're the ones that are filing the
12 claim, not me.

13 THE COURT: So if you have not had that discussion and you
14 don't know what claim they're relying upon, how do you know that
15 the information that they're seeking is disproportionate to the
16 claim itself and the damages they're seeking?

17 MR. FRANCUZENKO: There's only two claims available to
18 them. First -- take either one, First Amendment or the RLUIPA.

19 THE COURT: First Amendment.

20 MR. FRANCUZENKO: Okay.

21 THE COURT: So First Amendment means the expression of
22 your beliefs and thoughts.

23 MR. FRANCUZENKO: That's right.

24 THE COURT: Okay. And whether or not you violated those.

25 MR. FRANCUZENKO: Right.

1 THE COURT: And does that claim require any possible
2 knowledge of violation which then patterns information --

3 MR. FRANCUZENKO: -- {Simultaneous conversation
4 indiscernible.} --

5 THE COURT: To assist to approve, and so the request of
6 whether or not they're violating substantially -- people who are
7 substantially similarly situated as their client can assist in
8 proving that particular claim?

9 MR. FRANCUZENKO: It's not a *Monnell* claim, Your Honor.
10 It's either a violation or it's not. Maintaining the picture is
11 either a violation of the RUPELA [sic] -- RLUIPA, I'm sorry -- or
12 it's not, and it's not --

13 THE COURT: -- and all of these --
14 {Simultaneous conversation indiscernible.}

15 MR. FRANCUZENKO: -- pattern and practice --
16 {indiscernible}.

17 THE COURT: And all of these discussions you had with lead
18 counsel prior to the filing of this motion?

19 MR. FRANCUZENKO: I told him point blank, what do the
20 other people have to do with your client's --

21 THE COURT: -- and what was his explanation or his
22 response?

23 MR. FRANCUZENKO: His explanation was -- well, he's not
24 here to give it, but --

25 {Simultaneous conversation indiscernible.}

1

2 THE COURT: No, I'm asking you {indiscernible} --

3 MR. FRANCUZENKO: My recollection is that he felt like he
4 still needed that to prove his claim.

5 THE COURT: No, but that's not a -- then you said, Okay, I
6 can appreciate the fact that you think you need it; my question,
7 however, was, why do you -- authorized to have it based on why is
8 it relevant to prove the elements of the claim? How was what
9 you're seeking reasonably calculated to lead to the discovery of
10 admissible evidence to prove the elements of this claim which are
11 A, B and C?

12 MR. FRANCUZENKO: And that's -- {Simultaneous conversation
13 indiscernible.} --

14 THE COURT: Which one of those elements does this
15 information that you seek go and assist in proving? And once you
16 said that, he then said what?

17 MR. FRANCUZENKO: That's the point we disagreed on. He
18 feels like -- that the pictures or the other complaints, the
19 other similarly situated individuals was something that he needed
20 to --

21 THE COURT: -- all right {Simultaneous conversation
22 indiscernible.} --

23 MR. FRANCUZENKO: -- disagree with him.

24 THE COURT: That's a good dispute.

25 MR. FRANCUZENKO: It is.

1 THE COURT: Because the fact that you disagree doesn't
2 mean that your position is correct.

3 MR. FRANCUZENKO: That's right. That's why we're here.

4 THE COURT: So now that you've made your position clear,
5 thank you very much. Now I'll hear from opposing counsel
6 concerning your position.

7 MR. FRANCUZENKO: Right. And that's why we're here,
8 because we disagreed with that.

9 THE COURT: But that was not made clear in either the
10 motion in memoranda or the opposition. Maybe it was made in the
11 reply that I didn't get an opportunity to read.

12 MR. FRANCUZENKO: Well, Your Honor, I, again, am going
13 back to what I believe Judge O'Grady's intent was with regard
14 to --

15 THE COURT: -- well, there's no intent.

16 MR. FRANCUZENKO: Of course there is.

17 {Simultaneous conversation indiscernible.}

18 THE COURT: Judge O'Grady never intended for his ruling to
19 be used to put a restriction on the discovery that would be
20 authorized to prove the claims upon which his remaining damages
21 decision would be made.

22 MR. FRANCUZENKO: There are no damages in injunctive
23 relief.

24 THE COURT: That's a damage. That's an equitable damage.

25 MR. FRANCUZENKO: I don't see it that way.

1 THE COURT: Well, so? And so you and me disagree, but
2 that doesn't mean I don't have the right to get things and you
3 don't have the right to get things to prove our position, and
4 that's what he's doing.

5 {Simultaneous conversation indiscernible.}

6 MR. FRANCUZENKO: -- but you don't {indiscernible} --

7 THE COURT: -- to prove that he's right and you're wrong.

8 MR. FRANCUZENKO: Well, Your Honor --

9 THE COURT: -- if he's authorized to do that.

10 MR. FRANCUZENKO: If it --

11 THE COURT: -- you made your position clear. Let me hear
12 from opposing counsel.

13 MR. FRANCUZENKO: Thank you, Your Honor.

14 MR. SADOWSKY: So let's talk about relevance. I think we
15 tried to, and I apologize if we didn't do a good job, but I think
16 we tried to explain the relevance of all our claims in pages 5
17 through 9, I believe.

18 THE COURT: I'm going to start by saying you're going to
19 have to do a little better job than you did in the written
20 submissions.

21 MR. SADOWSKY: All right. That's fine. So let's start
22 with -- let's start with number 1. All policies, procedures,
23 training materials, and communications related to religious
24 accommodations. So under --

25 THE COURT: Well, let me start with something similar.

1 MR. SADOWSKY: Okay.

2 THE COURT: Page 6, paragraph 1.

3 MR. SADOWSKY: Page 6 of which document?

4 THE COURT: Your opposition.

5 MR. SADOWSKY: Okay.

6 THE COURT: Paragraph 1, line 2, request number 2, for
7 example; asks for the number of female bookings defendants
8 performed in 2019.

9 MR. SADOWSKY: Right.

10 THE COURT: What in the world does that have to do -- how
11 does that even go to proving the elements of a claim and whether
12 someone's First Amendment rights were violated?

13 MR. SADOWSKY: -- so --

14 THE COURT: -- not even your client's, even those people,
15 the number of bookings.

16 MR. SADOWSKY: So it's relevant in two ways. One, it's
17 relevant to determine -- the number of female bookings they have
18 is relevant to determine how often that they have --

19 THE COURT: -- that people are arrested.

20 MR. SADOWSKY: Gender issues, right?

21 THE COURT: No, no, no, no, no. There are no gender
22 issues until a gender brings up a gender issue. The majority of
23 females who were booked probably had no issues.

24 MR. SADOWSKY: So what --

25 THE COURT: -- so, therefore, the number of bookings is

1 not relevant, even if it is minusculely relevant, the number of
2 them searching for the entire number of bookings would definitely
3 be disproportionate to any justification or anything positive you
4 could get out of that to use.

5 MR. SADOWSKY: So let me talk about relevance.

6 THE COURT: It's like the probative value, like the old
7 rule, 403: It's probative value is substantially outweighed by
8 the burden that they would have to go through, because it has
9 very little, if any, probative value at all. That leads to the
10 definition of disproportionate.

11 MR. SADOWSKY: Let me start with 401, and then I'll move
12 to 403 real quickly. The 401, the relevance associated -- it's
13 relevant because we're trying to anticipate their defenses, why
14 it was narrowly tailored. One of the defenses we're trying to
15 anticipate -- remember, they're talking about whether they
16 have --

17 THE COURT: What do you mean, if they have? We don't get
18 discovery based upon anticipated defenses. Discovery is
19 information -- relevance for discovery is what's reasonably
20 calculated to lead to discovery of admissible evidence --

21 MR. SADOWSKY: -- {indiscernible} --

22 THE COURT: -- which is relevance, information that goes
23 to prove the elements of the claims or defenses. That means the
24 existing claims or defenses, not anticipated claims or
25 defenses -- because depending on what lawyer you are, you could

1 pretty much anticipate anything.

2 MR. SADOWSKY: Your Honor --

3 THE COURT: You don't get --

4 {Simultaneous conversation indiscernible.}

5 THE COURT: -- anything --

6 MR. SADOWSKY: This is not an affirmative defense, so we
7 couldn't exclude the possibility of this defense.

8 THE COURT: No, that's exactly what discovery is about.
9 You have to make a legal determination to exclude and not to
10 exclude certain things in a request; otherwise, what you're
11 saying meets the definition of a fishing expedition. Since we
12 can't exclude anything, we're going to ask for everything. That
13 is not how the discovery process is intended to work under the
14 Federal Rules of Civil Procedure or the local rules of this
15 Court.

16 MR. SADOWSKY: All right. I {indiscernible} history,
17 but --

18 THE COURT: That claim -- this particular request the
19 Court finds irrelevant and overly broad and disproportionate.

20 MR. SADOWSKY: All right. I guess I will not get --

21 THE COURT: With that particular information or armed with
22 that particular information, maybe you should take a closer look
23 at some of your other requests and maybe narrow your argument to
24 more effectively address those positions.

25 MR. SADOWSKY: Do you want me to continue or --

1 THE COURT: Yes, that's what I just said.

2 MR. SADOWSKY: On this one or do you have a different one
3 you want me to continue on?

4 THE COURT: Anything that's going to deal with numbers --
5 because I don't know all your requests --

6 {Simultaneous conversation indiscernible.}

7 MR. SADOWSKY: -- the only --

8 THE COURT: If you're just asking for a number, I don't
9 find one.

10 MR. SADOWSKY: The only other thing I would say about the
11 number, just -- if they came back and told us that's not
12 something we can punch into a computer and get an answer, we
13 would have accepted that.

14 THE COURT: But you don't have to because they don't have
15 to try. If they don't consider it relevant, then -- at this
16 juncture this Court has ruled that we concur with them, that that
17 request is not relevant.

18 MR. SADOWSKY: All right.

19 THE COURT: Forget disproportionate, it's just not
20 relevant.

21 MR. SADOWSKY: Let me start with document request 1, and I
22 could go through -- we can go through each one. All policies,
23 procedures, training materials, and communications related to
24 religious accommodations.

25 And so under {indiscernible} --

1

2 THE COURT: And what particular -- all religious
3 accommodations are involved in this case?

4 MR. SADOWSKY: We're talking about --

5 THE COURT: No, no, no. Answer the question. Are all
6 religious accommodations involved in this case?

7 MR. SADOWSKY: We're talking in general about a religious
8 accommodation.

9 THE COURT: We don't do generalities in discovery. The
10 purpose of discovery is to narrow the issues at trial.

11 MR. SADOWSKY: We're talking specifically about a
12 religious accommodations that --

13 THE COURT: -- which particular religious -- are all
14 religious accommodations part of this trial? If not, then you
15 should be looking for policies and things that address the
16 particular religious accommodation that was requested by your
17 client.

18 MR. SADOWSKY: We've done this a number of times, and I
19 just --

20 THE COURT: -- I don't care how many times.

21 {Simultaneous conversation indiscernible.}

22 MR. SADOWSKY: {Indiscernible} and it's never a Christian
23 religious accommodation policy or a Jewish religious
24 accommodation policy, it's --

25 THE COURT: -- there are different types of accommodations

1 even within a religion.

2 MR. SADOWSKY: Yes, but there's typically a religious --
3 {Simultaneous conversation indiscernible.}

4 THE COURT: {Indiscernible} certain flings that the Muslim
5 religion -- there are certain things -- the removal of facial
6 hair is an issue.

7 MR. SADOWSKY: Yes, but we're --

8 THE COURT: -- another religious accommodation of the same
9 religion --

10 MR. SADOWSKY: -- but --

11 THE COURT: -- is to be able to pray facing east in
12 certain parts of the day. So even the same religion may have
13 different requests and accommodations. What you get in discovery
14 may be -- are policies and procedures that affect and/or address
15 the particular religious accommodation that's involved in the
16 claims and defenses in this particular case.

17 MR. SADOWSKY: Sure, and we are not -- and we're never
18 intending to look for a beard policy.

19 THE COURT: But that's what your request says, any and all
20 policies and procedures that address religious accommodations.
21 That's your request, which means your request is overly broad.

22 MR. SADOWSKY: Religious accommodations, in our view, is a
23 policy. That's how -- there is a federal religious
24 accommodations policy. There is a {indiscernible} --

25 THE COURT: -- well, you would be incorrect.

1 MR. SADOWSKY: What?

2 THE COURT: That is not how someone could perceive or
3 interpret that request.

4 MR. SADOWSKY: If it was misunder- --

5 {Simultaneous conversation indiscernible.}

6 THE COURT: -- policies that address particular requested
7 accommodations. And you're asking for every single policy that
8 they have that addresses any religious accommodation, even though
9 any religious accommodation is not involved in this claim.

10 MR. SADOWSKY: All I can say is we did not intend that, to
11 be asking that.

12 THE COURT: I know you didn't intend it, but if you are
13 listening, what the Court is saying is that you need to more
14 narrowly and more artfully phrase your requests.

15 This right now, what we're doing is the conversation that
16 should have occurred between yourself and/or your lead counsel
17 and opposing counsel in the good faith meet and confer that's
18 required by the local rules of this court.

19 MR. SADOWSKY: I absolutely agree with that.

20 THE COURT: Well, then, here's a simple solution. The
21 Court will continue this matter until next Friday, and you go do
22 what you should have done before the motion was filed.

23 MR. SADOWSKY: All right.

24 MR. FRANCUZENKO: Your Honor, you can lead the horse to
25 water, but you can't make them drink.

1 {Simultaneous conversation indiscernible.}

2 THE COURT: I don't know whether the horse will drink or
3 not because all my order right now for the continuance is leading
4 him to the water.

5 MR. FRANCUZENKO: Thank you, Your Honor. But my point
6 being that I've already --

7 THE COURT: Well, try again.

8 MR. FRANCUZENKO: Approached {indiscernible}.

9 THE COURT: One attempt, in this Court's viewpoint or
10 opinion, does not meet the policy and purpose behind the local
11 rule. We don't throw our -- we don't throw -- have our reel,
12 throw our line out in the water once and leave it there for five
13 minutes and don't catch a fish and don't try again, because
14 you'll be an unsuccessful fisherman if that's the course of
15 action you took. Sometimes you've got wait a while. Sometimes
16 you've got to take the hook out and put it in again. Sometimes
17 you have to change the bait.

18 MR. FRANCUZENKO: And sometimes you catch the fish and you
19 fry it up.

20 {Simultaneous conversation indiscernible.}

21 THE COURT: And you if you hit that wall and you've down
22 all those things and find yourself in the same position, that's
23 an appropriate time to come to talk to the Court.

24 MR. FRANCUZENKO: Well, Your Honor, if we're going to do
25 that, and I'm not sure if this counsel is -- or there's another

1 counsel, because I've dealt with several different people on this
2 particular matter.

3 THE COURT: Are you asking the Court to require them to
4 only notice a particular person to conduct discovery with you?

5 MR. FRANCUZENKO: You've indicated your order. The only
6 thing is, I don't know that it's something that can be resolved
7 by next Friday.

8 THE COURT: No one does.

9 MR. FRANCUZENKO: So my point is --

10 THE COURT: -- but that's my order. We will have it next
11 Friday, which, inside implicitly in that ruling, is that you try
12 your best to resolve it by next Friday. No one can make miracles
13 happen, at least not me or you, and therefore if it's not
14 resolved, then it will be resolved by this Court next Friday.

15 MR. FRANCUZENKO: Your Honor, I'm before Judge Leonard
16 next Friday in Norfolk. I'm not available -- I'm not physically
17 available to appear. That's why -- my --

18 THE COURT: Well, we can move it to another Friday or the
19 Court can make it even simpler and say submit a notice --

20 MR. FRANCUZENKO: That's what I was going to ask.

21 THE COURT: -- by next Wednesday.

22 MR. FRANCUZENKO: That's what I was going to ask.

23 THE COURT: Close of business. And letting the Court know
24 of what has and has not been resolved. With that notice, inform
25 the Court on whether the parties believe that further oral

1 argument is necessary, and if not, the Court will rule on the
2 papers.

3 MR. FRANCUZENKO: Your Honor, that's what I would request
4 because, again, I'm not available next Friday. I'm with Judge
5 Leonard next Friday in Norfolk.

6 THE COURT: Well, what you've requested has just been
7 granted.

8 MR. FRANCUZENKO: Thank you, sir. By Wednesday close of
9 business you want some type of notice?

10 THE COURT: A joint notice from the parties informing the
11 Court of what has -- what remains to be resolved.

12 MR. FRANCUZENKO: Very well.

13 THE COURT: Hopefully, it will be a short notice that says
14 nothing.

15 MR. FRANCUZENKO: I'm hopeful, too, Your Honor.

16 MR. SADOWSKY: We're still open for the 10 billion, by the
17 way.

18 THE COURT: I surely don't have it on my wonderful
19 government salary, so you're going to have to get it somewhere
20 else.

21 MR. FRANCUZENKO: And I don't think he can get it from me,
22 from my client in this case because there's no monetary relief,
23 according to Judge O'Grady.

24 THE COURT: Who knows. The destruction of those pictures
25 could serve wonders in the amount of money she might be able to

1 get, or maybe the parties might just want to consider sitting
2 down and attempting to settle this matter.

3 MR. FRANCUZENKO: And, Your Honor, that's the funny thing.
4 I mean, if you would ask discovery dealing with these pictures,
5 like -- you would think they would want to know whose actually
6 physically got custody of these pictures. If that's truly the
7 only thing they have the relief for, let's -- I'll -- that's
8 relevant. That's relevant.

9 MR. SADOWSKY: I mean, if we're still arguing, we don't
10 need to know who has the pictures for a Court order to destroy
11 the pictures.

12 MR. FRANCUZENKO: Well, I can't destroy pictures if I
13 don't have them.

14 THE COURT: What I think he was trying to convey is that,
15 obviously, they can make a representation that they have no
16 further pictures in their possession and they have no custody or
17 control over anyone who has, for purposes of destruction, and
18 therefore if that statement in and of itself didn't make your
19 client feel comfortable enough, they could then take the further
20 step of informing you of who they believe might have the picture,
21 and they will use their best efforts to get those people to
22 destroy them pursuant to any order of this Court. And if that
23 then made your client comfortable enough, then the case is over.
24 Put it in a settlement agreement. We're done.

25 MR. FRANCUZENKO: Exactly.

1 MR. SADOWSKY: That would be great. I'm open to --

2 THE COURT: Maybe we can discuss that by next Friday as
3 well.

4 MR. FRANCUZENKO: That would great, Your Honor. Thank
5 you, Your Honor.

6 THE COURT: Thank you very much.

7 MR. FRANCUZENKO: Good to see you again.

8 THE COURT: You, too.

9 (Proceedings adjourned at 11:02 a.m.)
10

11 **C E R T I F I C A T E**

12
13 I, Scott L. Wallace, RDR-CRR, certify that
14 the foregoing transcript of proceedings was prepared from
15 an FTR Gold audio recording of proceedings in the
16 above-entitled matter and was produced to the best of my
17 ability. Indiscernible indications in the transcript
18 indicate that the audio captured was not clear enough to
19 attest to its accuracy.

20 /s/ Scott L. Wallace
21 -----

3/2/22

22 **Scott L. Wallace, RDR, CRR**
23 **Official Court Reporter**

Date